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SIPDIS

SENSITIVE

DEPARTMENT FOR WHA/CEN, WHA/PPC (C. ROE) AND DRL/IL

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SUBJECT: GUATEMALA LABOR/TIP UPDATE #6-2003

11. Summary: Following is an update of significant recent developments in the labor sector and trafficking in persons. Topics include:

- GOG to Attend GSP Hearing
- Progress in Monzon Lima Murder Investigation?
- MOL Willing to Combat "Blacklisting"
- Ambassador to Speak at Labor Justice Forum
- Pending Legislative Reforms Status Update
- MOL Proposes Maquila Pact: Rejected
- TIP - DCM Preparatory Bilateral
- TIP - Nine Stolen Babies Returned from Costa Rica
- TIP - GOG Brothel Raids Find no TIP Victims

End Summary.

GOG to Attend GSP Hearing

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12. (SBU) On September 25 LabAtt attended a meeting of GOG's "Inter-institutional Labor Working Group," comprised of representatives of the Labor, Economy, and Foreign Affairs ministries; the Attorney General's Office and the judiciary to encourage the GOG to participate in the upcoming GSP hearings and to provide a substantive official response to the pending GSP petitions. Minister of Labor Victor Moreira said Guatemalan Ambassador to Washington Antonio Arenales will attend the Oct. 7 GSP Public Hearing at USTR. The GOG is considering responding to the petitions at three levels, he said: 1) to report and correct issues of fact, 2) to report new developments (he cited the Choi Shin case as an example) and, 3) where structural problems are acknowledged, to propose goals and indicators to be achieved and monitored by the Embassy.

13. (SBU) LabAtt told the group that while we have noted some advances, the USG continues to be concerned about unresolved cases of violence against trade unionists, which distinguishes Guatemala from its neighbors and contributed to USTR's decision to review the petitions. The Special Prosecutor for Crimes Against Trade Unionists reported that he is offering protection to a key witness in the Monzon Lima murder case and hopes to use that witness to charge the main suspect in the case (see below). LabAtt suggested that the GOG provide details on this case in its report to USTR and requested that the GOG include information about results of the Guzman Lanuza murder case (where the transfer of the case to another Special Prosecutor resulted in an arrest of the main suspect). Cortez said he would consult with his colleagues and do so.

14. (SBU) LabAtt also expressed concern about delays in the labor justice system, and the need to reinstate workers illegally fired for unionization activities. Supreme Court Magistrate Otto Marroquin described efforts by the judiciary to resolve labor cases but noted limitations on making labor court reinstallation decisions effective.

Progress in Monzon Lima Murder Investigation?

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15. (SBU) On October 1, Special Prosecutor for Crimes Against Trade Unionists, Marco Antonio Cortez Sis, told LabAtt that a key witness implicating the intellectual author of the June 22, 2000 murder of Oswaldo Monzon Lima, General Secretary of the Gas Distributors Transportation Union, had accepted the Public Ministry's offer of witness protection. Cortez said an arrest of the prime suspect in the case, Mario Roberto Ortiz Barranco, could take place within the month. (Comment: the arrest of Ortiz would be a major milestone for the Special Prosecutor, who has been largely ineffective to date. End Comment.)

## MOL Willing to Combat "Blacklisting"

16. (SBU) On September 30, LabAtt accompanied two ex-DYMEL workers to meet with Labor Vice Minister Antonio Monzon. Miguel Angel Rivera and Wilson Pineda, both qualified welders, described their own efforts and those of other union members in the DYMEL dispute to find jobs in the construction industry. Those efforts have been largely thwarted by the existence of an internet-based blacklist of the 71 unionized ex-DYMEL workers. (Note: some ex-DYMEL workers have found jobs, but members of the union's executive board, including Rivera and Willy Hernandez, have had a tougher time finding work, and when they are contracted, they have been fired without explanation after a day or two. LabAtt expressed concern that this form of discrimination, if proven, violates fundamental labor rights. Monzon accepted the workers' complaint, and called together his staff to investigate. (Comment: One of the firms implicated in the blacklisting is PCCS, a subcontractor to Duke Energy. LabAtt had alerted Duke to these allegations and provided the names of workers contracted and dismissed; Duke's representative promised to look into the case. End Comment.)

## Ambassador to Speak at Labor Justice Forum

17. (U) The Ambassador has accepted an invitation from the National Sub-Commission to Strengthen the Labor Justice System to speak at a public event on October 8 marking publication of the sub-commission's proceedings. Composed of representatives of the GOG, the judiciary, unions, academics, and the private sector, the sub-commission is a rare example of consensus building in a highly polarized society. We hope it will provide a forum intent on making consensus-based reforms to the administration of the labor justice system, which is clogged and slow. In the absence of consensus within this group on the Executive's proposed procedural code reform, which is pending in Congress, the emphasis has shifted to making non-legislative changes to improve the labor justice system.

## Pending Legislative Reforms Status Update

18. (SBU) Labor Vice Minister Antonio Monzon claimed on September 30 that the FRG leadership in Congress will act on pending labor reforms when it can achieve a quorum, which is difficult during this election campaign period. The reforms, submitted in May as four separate bills, have been combined into one, which includes articles which:

- prohibit child labor for children under the age of 14 and fine (not less than \$2500) employers who violate this prohibition,

- define and prohibit the worst forms of child labor, and define the conditions of legal labor by minors under age 18,

- define and require an administrative fine for sexual harassment,

- mandate the formation of a joint management-worker committee to investigate allegations of sexual harassment in the workplace, to determine measures to immediately stop the harassment,

- require employers who fire workers without cause to give the fired worker the option of reinstallation or a severance payment,

- require employers to pay a worker who quits an amount equivalent to what that worker would received if fired without cause,

- close the exemption on rights and benefits of domestic workers,

- allow complainants to request that a labor court judge embargo employer assets at the outset of hearings,

- mandate an oral hearing on cases within two months of a complaint,

- require employers of foreign workers to pay a monetary contribution for training Guatemalans.

19. (SBU) Guido Ricci, a labor lawyer for the main employers association (CACIF), told LabAtt on October 1 that the private sector originally decided not to oppose the pending labor reforms, but now objects to giving workers fired without cause the right to reinstallation in lieu of severance benefits. This provision (inserted by the government to mollify union critics who worried universal severance would make it easier for employers to lay off workers) would restrict employers' rights to control the size of their labor force. With the prospect of a CAFTA which

might prohibit any changes to labor legislation that limit labor rights, employers cannot risk having Congress approve this provision, he said. Nevertheless, CACIF has not decided how to react publicly should the Congress take up the new draft bill. (Note: Ricci implied that CACIF did not want to be lured into public rejection of a bill, which the FRG would argue promotes labor rights, during the election campaign period. End Note.)

#### MOL Proposes Maquila Labor Pact

10. (SBU) Minister of Labor Moreira told LabAtt that Guatemalan labor law permits industry-wide collective bargaining agreements to be negotiated with unions representing 2/3 of all unionized workers in that sector. (Note: the requirement to organize an industrial union is different: 50% plus one of all workers in the sector. End Note.) Moreira said he intended to propose that VESTEX, the maquila employer association, which represents over 2/3 of the companies in that sector, enter into voluntary negotiations with the Choi Shin/Cimatextiles unions to achieve such a pact, which are the only unions which currently exist in the sector. Vice Labor Minister Monzon subsequently told LabAtt that the Minister had made the proposal to VESTEX, and it was rejected. Comment: This was vintage Moreira--audacious and seemingly intended to provoke the rejection of the private sector. End Comment.

#### TIP - DCM Preparatory Bilateral

11. (SBU) On October 1, the DCM and LabAtt attended a meeting with MFA bilateral affairs officers and Mario Rene Cifuentes, the Foreign Minister's advisor on security issues, to request a meeting of the bilateral working group on trafficking in persons proposed in July by the GOG. Cifuentes offered to produce a draft "matrix" of benchmark goals that both governments share. The DCM provided text of President Bush's UNGA speech and urged the GOG to make progress developing cases against traffickers. The MFA officers requested a tri-lateral meeting of immigration officials from the US, Mexico and Guatemala to share ideas about border controls, with a possible emphasis on trafficking in persons. They also requested a USG participant to give a briefing on TIP at an upcoming (unscheduled) series of seminars it will offer its own staff on the broad theme of migration. The DCM said we would look forward to reviewing the matrix next week.

#### TIP - Nine Stolen Babies Returned to Guatemala

12. (U) Press reported the repatriation of nine babies allegedly destined for illegal adoption in Costa Rica for up to \$80,000 each. A Guatemalan woman and Carlos Hernan Robles, a Costa Rican banker, were allegedly detained by Costa Rican authorities in the scheme.

#### TIP - GOG Brothel Raids Find no TIP Victims

13. (SBU) DHS officer met in September with the Oscar Contreras, the Director General of Immigration, to request cooperation to investigate cases of TIP. Contreras agreed to do so, and coordinated a raid on brothels with the national police and Public Ministry on September 10. The 25 women, mostly Salvadoran and Honduran, denied to DHS interviewers that they were victims of TIP (i.e. forced or tricked into prostitution). DCM will meet with Contreras on October 7 to request further efforts to combat TIP.

HAMILTON